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Finding and Using Images, While Respecting Copyright

by Roger V. Skalbeck

Text plays a central role in nearly every lawyer's life. From cases to codes to contracts, words matter tremendously. At times, words alone are insufficient. A well-selected image can evoke emotion and attract attention. While there are literally millions of images online available for use without cost, a well sourced and properly referenced image should recognize and respect the creator's intellectual property rights.

Here are tips for finding and using images, while respecting copyright.

Public Domain Content

Using an automated technique to extract 14 million images from digitized books no longer protected by copyright, the Internet Archive has created a massive public domain collection.¹ New images are uploaded regularly to photo sharing site Flickr, with more than 5.3 million online now. The Library of Congress also maintains a collection of photographs on Flickr, providing nearly 30,000 images with no known copyright restrictions. Both of these collections rely heavily on the fact that works published in the United States prior to 1923 are now in the public domain.

Creative Commons Content

Works published under a Creative Commons license are another group of works available for reuse. Creative Commons is an open license agreement where creators identify certain rights that are allowed without permission or negotiation, with a handful of license types. The primary requirement is that any use be attributed to the creator.

The Creative Commons website explains how licenses work and features a new search engine for locating, saving, and using images: <https://ccsearch.creativecommons.org/>. Users can search multiple collections, including

works available for commercial reuse. Collections include photos from the sites Flickr and 500px, as well as works from museums and the New York Public Library.

Every image found on the Creative Commons site is accompanied by specific guidance on image reuse, including options to copy attribution details as text or HTML. By creating a free account on this site, you can save images as favorites or in curated lists.

Using Google Images or Flickr, you can also search openly licensed content. On Google Images, the "Tools" section allows you to search by size, color, type, and usage rights. License rights are differentiated to include groups for commercial or noncommercial use, as well as works that can be modified.

Flickr has 76-plus million photos available for commercial use requiring only attribution. Another 21-plus+ million images can be used commercially, but creators restrict modification or the creation of derivatives. Flickr results can be sorted by color, pattern, and photo type, with simple controls appearing at the top of any search set. If you run a blog or website on the WordPress platform, the WP Inject plugin (<https://wordpress.org/plugins/wp-inject/>) lets you search for openly licensed photos and insert them into your site with just a few clicks. With this, the image is automatically uploaded, and it creates the necessary attribution and link back to the original source. Users can explore Flickr Creative Commons content at <https://www.flickr.com/creativecommons/>.

A July 2017 recent case pending in the US Court of Appeals for the Second Circuit² involves the interpretation and application of Creative Commons licenses. Here the Creative Commons organization filed an Amicus Brief argu-

ing that reproduction of works created under a specific noncommercial license can be provided by FedEx Office, even though they are a commercial entity that charges for reproduction services. While this case doesn't deal with licenses that embrace commercial use, the litigation should help clarify and strengthen how courts interpret them.

If you need a good image for a website, PowerPoint or Keynote presentation, the Internet has literally millions of options available. By choosing works in the public domain or those licensed for use, you can respect copyright and help recognize each creators' intellectual property in the process.

The rules to attribute works owned by others are far less exacting than the *Bluebook* or many court citation rules. As no lawyer would argue a point of law without a proper citing reference, no copyright-respecting attorney should use another's image without knowing when and how to attribute it.

Endnotes:

- 1 Robert Miller, *Millions of historic images posted on Flickr*, Internet Archive Blogs, (August 29, 2014), <https://blog.archive.org/2014/08/29/millions-of-historic-images-posted-to-flickr/> [https://perma.cc/5HJD-2366].
- 2 Diane Peters, *CC files amicus brief explaining NC licenses in Great Minds v. FedEx Office litigation*, Creative Commons Blog, (July 6, 2017), <https://creativecommons.org/2017/07/06/cc-amicus-brief/> [https://perma.cc/6L84-62BV].



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